

REMARKS

This communication responds to the Office Action mailed on February 7, 2008.

Claims 1, 2, 4, 6-8, 11-12, 14, 17, 20, 22, 27-28, and 30 are amended, claim 10 is canceled, and no claims are added; as a result, claims 1-9, and 11-34 are now pending in this application.

No new matter has been added through the amendments to claims 1, 2, 4, 6-8, 11-12, 14, 17, 20, 22, 27-28, and 30. Support for the amendments to the above claims are found throughout the specification, including but not limited to the specification on page 4, lines 10-19; FIG. 1; FIG. 2; page 5, lines 9-17; page 6, lines 3-18; and FIG. 3.

§112 Rejection of the Claims

Claims 4, 8, 12, 14-16, 20, 24, 28 and 30-34 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Applicant has amended these claims to clarify these claims. Therefore, Applicant respectfully requests that rejection to these claims under 35 U.S.C. § 112, second paragraph, be removed and the claims be allowed.

§102 Rejection of the Claims

Claims 1, 3-6, 8-17, 19-22, 24-30 and 32 were rejected under 35 U.S.C. § 102(e) for anticipation by Chung et al. (US 2008/0022286). Applicant does not admit that Chung is prior art and reserves the right to swear behind this reference at a later date. In addition, because the Office has not properly established a *prima facie* case of anticipation, the Applicant respectfully traverses the rejection of the claims.

It is respectfully noted that anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The *identical invention* must be shown in as complete detail as is contained

in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

Amended independent claim 1 recites in part, “**resource consumer having a plurality of fields associated with the resource consumer**, wherein the **plurality of fields includes a consumer type field, a flavor field and a place field**, the resource consumer including at least one of a process and a thread (emphasis added).” Applicant cannot find in Chang any disclosure of, among other things, the above elements.

In contrast to amended independent claim 1, Chang apparently notes:

FIGS. 3 and 4 illustrate in greater detail the process associated with creating a thread for an application program, during which resource allocation data, specified by the application program is used to configure a resource allocation manager in a kernel to appropriately allocate resources for the created thread. In particular, FIG. 3 illustrates a create thread routine 50 that is executed by an application program, e.g., during the initial execution of the application program, or during the establishment of additional threads for an application program that is currently executing. (*See* Chang ¶ 52.)

Next, block 56 invokes a thread creation routine in the kernel to create the thread for the application program. Once the kernel creates the new thread, control returns to routine 50, and the routine is complete. (*See id.* ¶ 55.)

Thus, although Chang creates a thread for an application program, Chang apparently does not create “a resource consumer having a plurality of fields associated with the resource consumer, wherein the plurality of fields includes a consumer type field, a flavor field and a place field.”

Additionally, amended independent claim 1 recites in part, “determining whether the resource consumer is limited to **receiving resources including hardware and software resources** from a certain one of a set of resource providers.”

On the contrary, Change notes:

A resource allocation preference consistent with the invention typically includes sufficient information to permit desired hardware resources to be allocated for an application program. A resource allocation preference may identify, for example, a particular subset of the hardware resources in a

computer (referred to as “home” resources). (See Chang ¶ 28, lines 1-6.)

It will also be appreciated that a hardware resource consistent with the invention may incorporate any number of types of computer resources, including but not limited to processor resources, memory resources, peripheral resources, and combination thereof. Moreover, memory resources may include various types of memory devices including but not limited to main memory, cache memory, registers, mass storage devices, non-volatile memory, and combinations thereof. (See Chang ¶ 33.)

Thus, the resource providers described in Chang merely provides for hardware resources and does not teach or disclose software resources as claimed in amended independent claim 1.

For reasons analogous to those stated above with respect to independent claim 1, Chang does not show all elements of independent claims 6, 11, 14, 17, 22, and 27. Therefore, independent claims 1, 6, 11, 14, 17, 22, and 27 at least as amended, are not anticipated by Chang.

Claims 2-5 depend from claim 1. Claims 7-10 depends from claim 66. Claims 12-13 depends from claim 11. Claims 15-16 depends from claim 14. Claims 18-21 depends from claim 17. Claims 23-26 depends from claim 22. Claims 28-29 depends from claim 27. Claims 31-34 depends from claim 30. These dependent claims inherit the elements of their respective base claims, and are therefore are not anticipated by Chang for at least the same reasons as discussed above with respect to independent claim 1.

For the above reasons, Applicant respectfully requests reconsideration and the withdrawal of the rejection, an allowance of claims 1, 3-6, 8-9, 11-17, 19-22, 24-30, and 32.

§103 Rejection of the Claims

Claims 2, 7, 18, 23 31 and 33-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chung et al. (US 2008/0022286). Applicant respectfully traverses this rejection on the grounds that no *prima facie* case of obviousness presently exists with respect to these claims, for reasons similar to those already discussed above with respect to the § 102 rejection, and also for the reasons discussed below.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*¹. To establish prima facie obviousness of a claimed invention, all the claim limitations must be considered. MPEP 2143.03. “All words in a claim must be considered in judging the patentability of that claim against the prior art.”

Regarding claims 2, 7, 18, 23, 31 and 33-34, as described above, Applicant cannot find in Chung, and/or the reasoning of the Office Action any disclosure, teaching, or suggestion of, among other things, a method of **“creating a resource consumer having a plurality of fields associated with the resource consumer, wherein the plurality of fields includes a consumer type field, a flavor field and a place field, the resource consumer including at least one of a process and a thread (emphasis added).”**

Thus, because Chang fails to disclose, teach or even suggest all elements recited or incorporated in claims 2, 7, 18, 23, 31 and 33-34, Applicant respectfully submits that no prima facie case of obviousness presently exists with respect to claims 2, 7, 18, 23, 31 and 33-34. Accordingly, Applicant respectfully requests withdrawal of this rejection of these claims.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner’s personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to

¹ 837 F.2d 1071, 1074, 5 U.S.P.Q.2d (BNA) 1596, 1598 (Fed. Cir. 1988)

pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6909 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9 day of June 2008.

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